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10
11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 In re:

15 LEEWARD HOTELS, L.P., an Arizona Limited
16 Partnership,

17 Debtor.

In Proceedings Under Chapter 11

Case No. B-99-09162 ECF-GBN

**ERRATA TO SECURED LENDER'S
OBJECTION TO DISCLOSURE
STATEMENT**

Date of Hearing: January 10, 2000

Time of Hearing: 10:30 a.m.

18 LASALLE NATIONAL BANK, in its capacity as Trustee for the registered holders of DLJ
19 Mortgage Acceptance Corporation, Commercial Mortgage Passthrough Certificates, Series 1997-CF1,
20 by and through its Servicer, Lennar Partners, Inc. (the "Secured Lender") hereby files this Errata with
21 respect to the "Objection To Approval Of Debtor's Disclosure Statement Dated October 29, 1999" filed
22 on or about January 3, 2000 (the "Disclosure Statement Objection").

23 With respect to the Disclosure Statement Objection, and in particular Exhibit "2", the Secured
24 Lender had set forth payments it had received within 90 days of the Chapter 11 filing of LEEWARD
25 HOTELS, LP (the "Debtor"). The 90-day time period prior to the August 2, 1999 filing would have
26 been through May 4, 1999.

27 In that Exhibit, the Secured Lender mistakenly included a payment that it received on May 3,
28 1999 from Kilburg Hotels, LLC in the amount of \$50,000.00.

Attached hereto please find an "Amended Exhibit '2'" which is intended to replace and supersede the Exhibit "2" attached to the Disclosure Statement Objection. Specifically, with respect to the payment by cashiers check on May 3, 1999, that was hand-delivered by the Hebert Schenk law firm to undersigned Arizona counsel on May 3, 1999. Undersigned counsel then overnight mailed it to the Secured Lender in Miami. Since the payment was by cashiers check, even if one were to assume, *arguendo*, that such payment constituted a transfer of property of the Debtor (as opposed to property of Kilburg Hotels, LLC, the general partner), the delivery of the cashiers check to the Secured Lender's attorney on May 3 constituted transfer of those funds on the date of delivery. *See In re Toone*, 140 B.R. 605 (Bankr. D. Mass. 1992) ("transfer" for preference purposes when payment is made via cashiers check occurs upon delivery of the cashiers check).

Accordingly, even in a best case scenario for this Debtor in overcoming all of the hurdles with respect to the alleged preference payments to the Secured Lender, the total amount would not be \$550,000.00, but only \$500,000.00 as set forth in the Amended Exhibit "2".

RESPECTFULLY SUBMITTED this 6th day of January, 2000.

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By /s/ Thomas J. Salerno

Thomas J. Salerno
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COPY of the foregoing mailed
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